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Joan Shrum

**UNITED STATES DISTRICT COURT
DISTRICT OF NEVADA**

JOAN SHRUM,

Plaintiff,

v.

MIDLAND CREDIT MANAGEMENT,
INC,

Defendant.

Civil Action No.: _____

COMPLAINT

For this Complaint, Plaintiff Joan Shrum, by undersigned counsel, states as follows:

JURISDICTION

1. This action arises out of Defendant's repeated violations of the Fair Debt Collection Practices Act, 15 U.S.C. § 1692, et seq. ("FDCPA"), and the

1 harassment of Plaintiff by Defendant and its agents in their illegal efforts to collect
2 a consumer debt. Jurisdiction is therefore proper in this Court pursuant to 28 U.S.C.
3 § 1331.

4
5 2. Supplemental jurisdiction exists pursuant to 28 U.S.C. § 1367.

6 3. Venue is proper in the U.S. District Court for the District of Nevada
7 pursuant to 28 U.S.C. § 1391(b), as Defendant transacts business in the State of
8 Nevada.
9

10 **PARTIES**

11 4. Plaintiff Joan Shrum (“Plaintiff”) is an adult individual residing in Las
12 Vegas, Nevada, and is a “consumer” as the term is defined by 15 U.S.C. § 1692a(3).
13

14 5. Defendant Midland Credit Management, Inc. (“Midland”) is doing
15 business in the State of Nevada as a licensed collection agency, holds itself out in
16 the community as collecting and servicing the unpaid debts that have been charged
17 off by original creditors, and whose principal business is the collection of debts.
18

19 6. Midland is a “debt collector” as the term is defined by 15 U.S.C. §
20 1692a(6).
21

22 **ALLEGATIONS APPLICABLE TO ALL COUNTS**

23 **A. The Debt**

24 7. Plaintiff allegedly incurred a financial obligation (“Debt”) to Capital
25 One, N.A. (“Original Creditor”).
26
27
28

1 8. The Debt arose from credit card purchases on Plaintiff's Capital One
2 Walmart Rewards card, which was used to purchase family, personal and household
3 items.

4
5 9. Accordingly, the Debt meets the definition of a "debt" under 15 U.S.C.
6 § 1692a(5).

7
8 10. The Debt was purchased, assigned or transferred to Midland for
9 collection, or Midland was employed by the Creditor to collect the Debt.

10 11. Midland identified the Debt with an account number ending
11 *****3034.

12
13 12. Midland attempted to collect the Debt, sending multiple collection
14 letters to Plaintiff demanding payment in the amount of \$1,778.12. As such,
15 Midland engaged in "communications" as defined in 15 U.S.C. § 1692a(2).
16

17
18 **B. Midland's Harassment, Oppression and Abusive Conduct**

19
20 13. On May 17, 2020, Plaintiff filed for Chapter 7 Bankruptcy in the
21 District of Nevada. Plaintiff's case was assigned number 20-12399-mkn
22 ("Bankruptcy").
23

24 14. The Debt was scheduled in the Bankruptcy. *See* Bankruptcy ECF No.
25 1.
26
27
28

Capital One Bank		Total claim
4.1	Last 4 digits of account number 303703034	\$ 1,780.00
Nonpriority Creditor's Name		
C/O Midland Management		
Number Street		
P. O. Box 301030		
Los Angeles	CA	90030-1030
City	State	ZIP Code
Who incurred the debt? Check one.		
<input checked="" type="checkbox"/> Debtor 1 only		
<input type="checkbox"/> Debtor 2 only		
<input type="checkbox"/> Debtor 1 and Debtor 2 only		
<input type="checkbox"/> At least one of the debtors and another		
<input type="checkbox"/> Check if this claim is for a community debt		
Is the claim subject to offset?		
<input checked="" type="checkbox"/> No		
<input type="checkbox"/> Yes		
When was the debt incurred? _____		
As of the date you file, the claim is: Check all that apply.		
<input type="checkbox"/> Contingent		
<input type="checkbox"/> Unliquidated		
<input type="checkbox"/> Disputed		
Type of NONPRIORITY unsecured claim:		
<input type="checkbox"/> Student loans		
<input type="checkbox"/> Obligations arising out of a separation agreement or divorce that you did not report as priority claims		
<input type="checkbox"/> Debts to pension or profit-sharing plans, and other similar debts		
<input checked="" type="checkbox"/> Other. Specify Collection Agency		

15. Midland received notice of the Bankruptcy through the Court's BNC Noticing System. *See* Bankruptcy ECF No. 8.

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United States Bankruptcy Court
District of Nevada

In re:
JOAN ELAINE SHRUM
Debtor

Case No. 20-12399-mkn
Chapter 7

CERTIFICATE OF NOTICE

District/off: 0978-2

User: admin
Form ID: 309A

Page 1 of 1
Total Noticed: 11

Date Rcvd: May 18, 2020

Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on May 20, 2020.

db	+JOAN ELAINE SHRUM,	2246 LITTLE RIVER COURT,	LAS VEGAS, NV 89156-6100
11162777	+CALIFORNIA DEPT. OF	TREASURY,	INTERNAL REVENUE SERVICE, FRESNO, CA 93888-0001
11162778	CAPITAL ONE BANK,	C/O MIDLAND MANAGEMENT,	P. O. BOX 301030, LOS ANGELES, CA 90030-1030
11162780	+DISCOVER BANK,	C/O JOSEPH DINOLA, ESQ.,	7271 W. CHARLESTON BLVD., #100,
	LAS VEGAS, NV 89117-1686		
11162781	DISCOVER FIN SVCS LLC,	C/O JOSEPH DINOIA, ESQ.,	7271 W. CHARLESTON ROAD, #100,
	WILMINGTON. DE 19850		

16. On August 24, 2020, the Bankruptcy Court entered Plaintiff's Chapter 7 Discharge. *See* Bankruptcy ECF No. 14.

17. Midland received notice of the discharge through the Court's BNC Noticing System. *See* Bankruptcy ECF No. 15.

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United States Bankruptcy Court
District of Nevada

In re:
JOAN ELAINE SHRUM
Debtor

Case No. 20-12399-mkn
Chapter 7

CERTIFICATE OF NOTICE

District/off: 0978-2

User: admin
Form ID: 318

Page 1 of 1
Total Noticed: 11

Date Rcvd: Aug 24, 2020

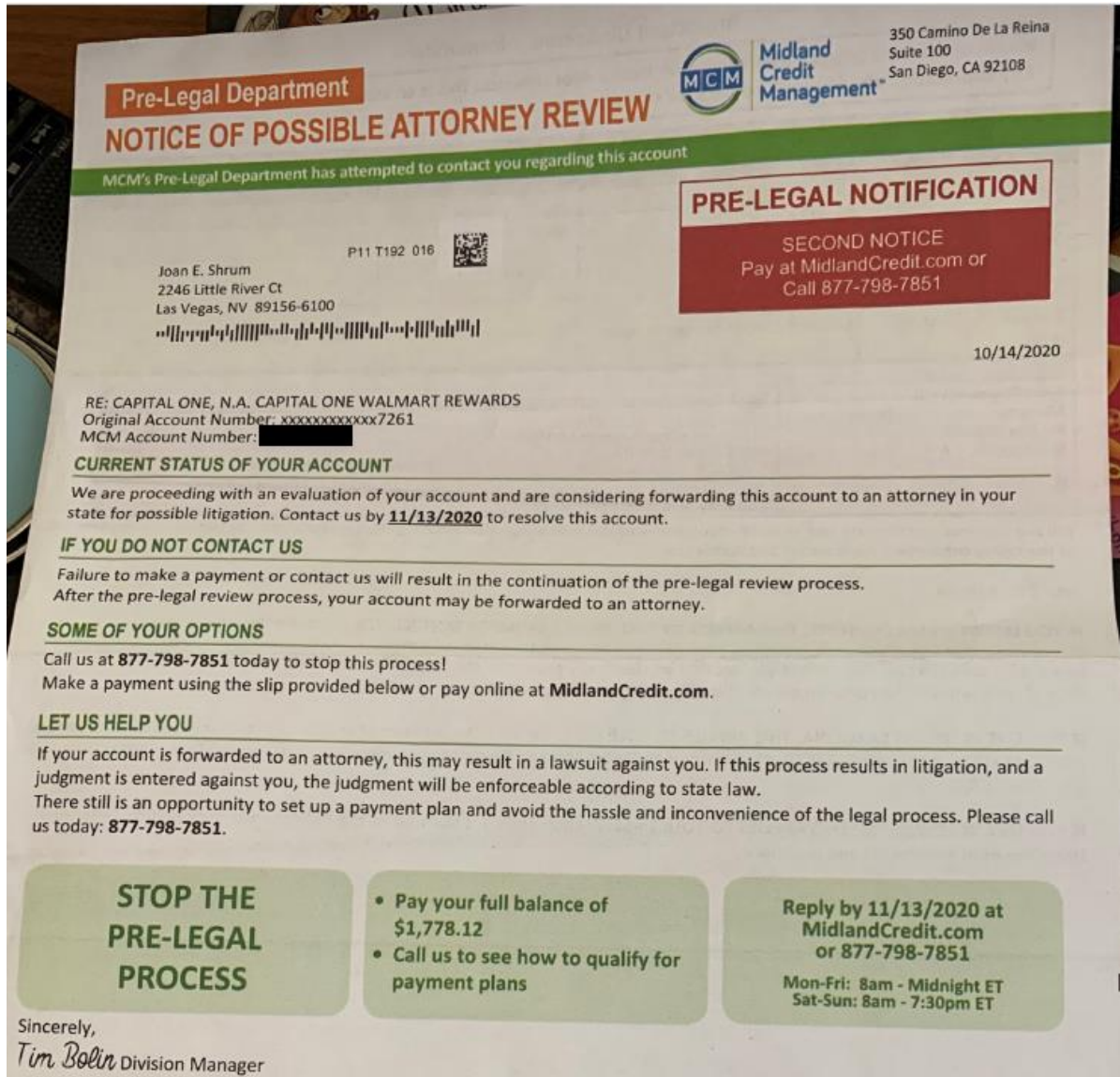
Notice by first class mail was sent to the following persons/entities by the Bankruptcy Noticing Center on
Aug 26, 2020.

db	+JOAN ELAINE SHRUM,	2246 LITTLE RIVER COURT,	LAS VEGAS, NV 89156-6100
aty	+CHAD M. GOLIGHTLY,	FAIR FEE LEGAL SERVICES,	8665 SOUTH EASTERN AVE, STE 101,
		LAS VEGAS, NV 89123-2802	
11162777	+CALIFORNIA DEPT. OF TREASURY,	INTERNAL REVENUE SERVICE,	FRESNO, CA 93888-0001
11162778	CAPITAL ONE BANK,	C/O MIDLAND MANAGEMENT,	P. O. BOX 301030, LOS ANGELES, CA 90030-1030
11162780	+DISCOVER BANK,	C/O JOSEPH DINOLA, ESQ.,	7271 W. CHARLESTON BLVD., #100,
		LAS VEGAS, NV 89117-1686	

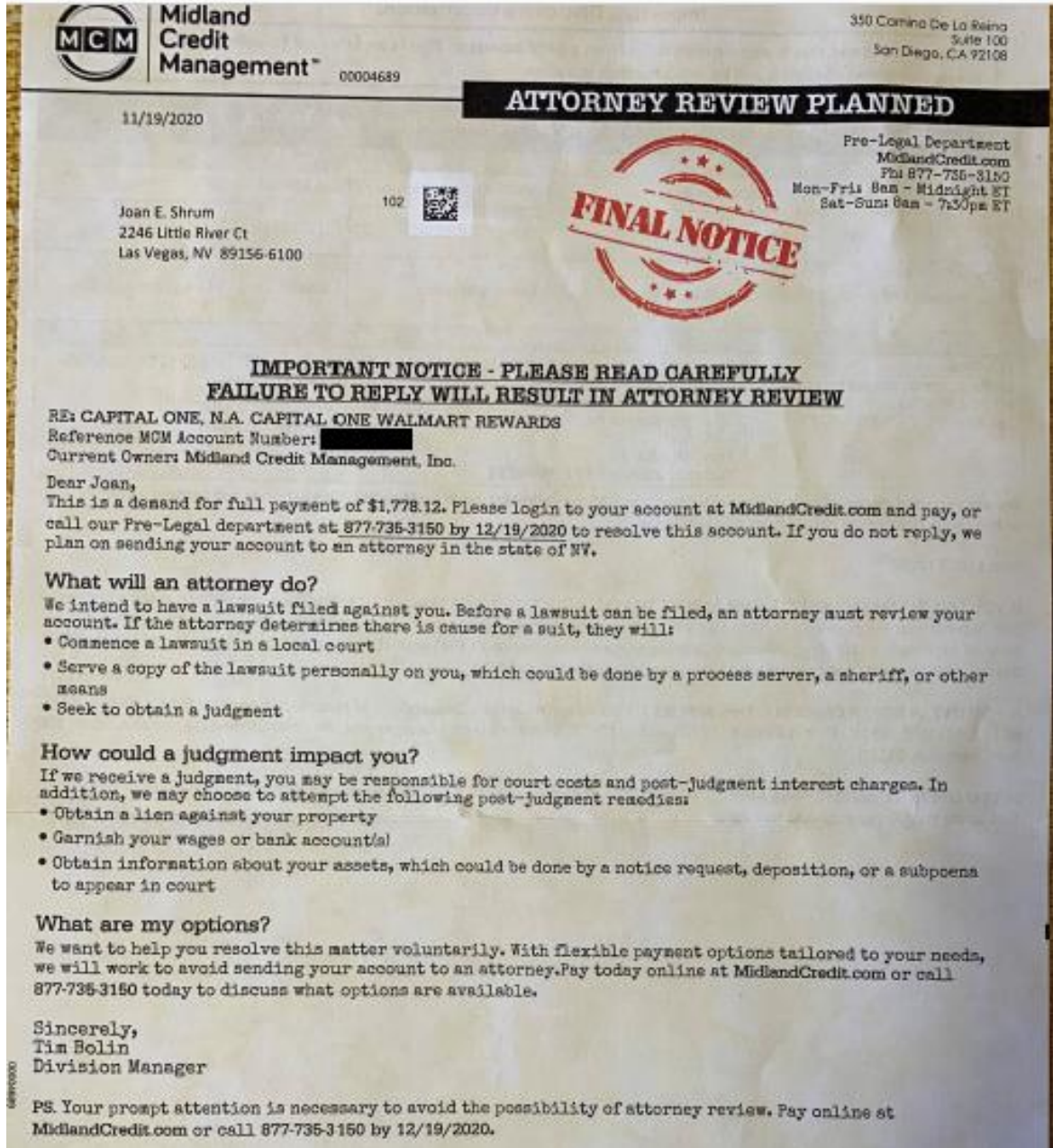
18. Midland knew or should have known that a discharge in Plaintiff's Bankruptcy operated as an injunction against the commencement or continuation of any action, the employment of process, or any act, to collect, recover or offset the Debt against Plaintiff as a personal liability of Plaintiff. *See* 11 U.S.C. § 524(a)(2).

19. However, despite Midland's knowledge of Plaintiff's Bankruptcy discharge, Midland engaged in intentional and willful debt collection tactics in an effort to collect the discharged Debt from Plaintiff.

20. Midland sent a collection letter to Plaintiff dated October 14, 2020, demanding Plaintiff pay \$1,778.12 on the Debt under threat of litigation, as seen below.



21. Midland sent a second collection letter, dated November 19, 2020, again demanding Plaintiff pay \$1,778.12, and threatening Plaintiff that if she did not pay, “we intend to have a lawsuit filed against you,” as shown below:



22. At the time Midland sent these two collection letters, Plaintiff's personal liability on the Debt had been discharged, and there was no basis or grounds to collect the Debt.

23. Further, Midland knew or should have known that it had no legal basis to commence litigation against Plaintiff to collect the discharged Debt yet willfully

1 and intentionally sent illicit collection communication to Plaintiff.

2 24. Alternatively, Midland's conduct was reckless and/or negligent in
3 sending communications to Plaintiff, demanding payment of a Debt in an amount
4 that was not owed and threatening legal action that could not be taken.
5

6
7 **C. Plaintiff Suffered Actual Damages**

8
9 25. Plaintiff has suffered and continues to suffer actual damages as a result
10 of Midland's unlawful conduct.

11 26. As a direct consequence of Midland's acts, practices, and conduct,
12 Plaintiff suffered and continues to suffer from humiliation, anger, anxiety, emotional
13 distress, fear, frustration, and embarrassment.
14

15 27. Plaintiff also feels the benefit of the Bankruptcy has been lost if
16 Midland is permitted to continue its illegal collection efforts on the Debt.
17

18 28. Plaintiff has had to retain the services of an attorney to stop Midland's
19 harassment, oppression and abusive debt collection conduct.
20

21
22 **COUNT I**
23 **VIOLATIONS OF THE FDCPA - 15 U.S.C. § 1692e, et seq.**

24
25 29. Plaintiff incorporates by reference all the above paragraphs of this
26 Complaint as though fully stated herein.

27 30. Defendant's conduct violated 15 U.S.C. § 1692e(2) in that Defendant
28

1 misrepresented the amount of the Debt owed, falsely asserting that Plaintiff owed
2 \$1,778.12 on the Debt for which Plaintiff had no personal liability.

3 31. Defendant's conduct violated 15 U.S.C. § 1692e(5) in that Defendant
4 threatened to take legal action against Plaintiff if she did not pay the Debt. However,
5 because the Debt was discharged in the Bankruptcy, Midland was legally enjoined
6 from commencing legal action against Plaintiff to collect the Debt.
7

8
9 32. The foregoing conduct relating to these FDCPA claims is not
10 predicated on a violation of a discharge order, nor does Plaintiff seek relief for
11 violation of a discharge order. Rather, Plaintiff's FDCPA claims are predicated on
12 Defendant's misrepresentations of the amount of the Debt, Defendant's threats to
13 take action that could not legally be taken, and Defendant's collection
14 communications and debt collection efforts regarding the Debt.
15

16
17 33. Plaintiff is not seeking a private right of action under the Bankruptcy
18 Code as there is no independent basis under the Bankruptcy Code to provide redress
19 to Plaintiff for Defendant's misrepresentation of the correct and lawful amount of
20 the Debt.
21

22
23 34. Plaintiff also does not suggest that the Bankruptcy Code may be used
24 to create substantive rights for a private right of action thereunder for Defendant's
25 FDCPA collection violations. These FDCPA claims are remote from the
26 Bankruptcy Code and operate as their own independent claims under non-
27
28

1 bankruptcy law.

2 35. The foregoing acts and omissions of Defendant constitute numerous
3 and multiple violations of the FDCPA, including every one of the above-cited
4 provisions.
5

6 36. Plaintiff is entitled to damages as a result of Defendant's violations.

7
8 37. Plaintiff has been required to retain the undersigned as counsel to
9 protect his legal rights to prosecute this cause of action, and is therefore entitled to
10 an award of reasonable attorneys' fees plus costs incurred.
11

12 **PRAYER FOR RELIEF**

13 **WHEREFORE**, Plaintiff prays that judgment be entered against Defendant,
14
15 awarding Plaintiff:
16

17 **COUNT I.**
18 **VIOLATIONS OF 15 U.S.C. § 1692e**

19 1. actual damages including, but not limited to, the emotional distress

20 Plaintiff has suffered (and continues to suffer) as a result of the
21 intentional, reckless, and/or negligent FDCPA violations pursuant to 15
22 U.S.C. § 1692k(a)(1);
23

24 2. statutory damages of \$1,000.00 pursuant to 15 U.S.C. §
25 1692k(a)(2)(A);
26

27 3. punitive damages; and
28

1 4. any other and further relief that the Court may deem just and proper.

2 **TRIAL BY JURY DEMANDED ON ALL COUNTS**

3
4 Dated: February 15, 2021

5 Respectfully submitted,

6
7 By /s/ David Krieger, Esq.
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